

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

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FEB 13 2004

Michael N. Milby, Clerk

In Re ENRON CORPORATION
SECURITIES, DERIVATIVE &
"ERISA" LITIGATION

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MDL 1446

MARK NEWBY, ET AL.,

§
§
§

Plaintiffs

VS.

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§
§

CIVIL ACTION NO. H-01-3624
CONSOLIDATED CASES

ENRON CORPORATION, ET AL.,

§
§

Defendants

PAMELA M. TITTLE, on behalf of
herself and a class of persons similarly
situated, ET AL.,

§
§
§

Plaintiffs

VS.

§
§
§

CIVIL ACTION NO. H-01-3913
CONSOLIDATED CASES

ENRON CORP., an Oregon Corporation,
ET AL.,

§
§

Defendants

MOTION FOR PROTECTIVE ORDER
REGARDING ANDERSEN DOCUMENTS

and

NOTICE OF CONFIDENTIALITY DESIGNATION

Defendant, Enron Corp. ("Enron"), pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and in light of the Court's March 28, 2003 Order (MDL 1446 Docket Entry No. 83), moves the Court for a protective order covering certain documents which Enron has designated as confidential, and that the court prohibit disclosure of such documents to third parties, and prohibit the dissemination or use of those documents for

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purposes not related to this litigation. Enron also hereby designates as confidential pursuant to General Order 2002-9, and Paragraph 4 of the Court's March 28, 2003 Order, certain documents containing personnel files and personal employee information. In support of its request, Enron shows as follows:

A. Preliminary Statement

Arthur Andersen, LLP ("Andersen") has produced documents to the depository in this case that contain Enron's confidential information (the "Andersen Documents"). Disclosure of confidential Enron information contained in the Andersen Documents to third parties is likely to cause harm to Enron's estate. On October 27, 2003, Enron and certain interested parties entered into a Stipulation Regarding Enron Documents Produced by Arthur Andersen (the "Stipulation"), a copy of which is attached hereto as Exhibit A. The Stipulation required the parties to keep the Andersen Documents confidential until February 15, 2004. During that time, Enron was to review the Andersen Documents and file a motion with the Court for protection of any confidential documents it identified. Enron has now reviewed the documents and identified several that contain confidential information and should be protected from disclosure. Therefore, Enron moves that the court protect from disclosure those documents described in the attached affidavits.

B. The Legal Framework

Under Federal Rule of Civil Procedure 26(c)(7), "for good cause shown, the court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way." For "good cause" to exist, the

party seeking the protective order must show that “specific prejudice or harm will result if no protective order is granted.” Phillips v. General Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002). “If a court finds that particularized harm will result from disclosure of information to the public, then it balances the public and private interests to decide whether a protective order is necessary.” Id. at 1211. As this Court explained in its January 6, 2004 Order (MDL 1446 Docket Entry No. 188), a prerequisite to obtaining a protective order is to describe “a properly demarcated category of legitimately confidential information.” Although Rule 26(c) sets forth specific categories of information that may be made the subject of a protective order, those categories are not exclusive. The law “gives district courts broad latitude to grant protective orders to prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information.” Id. (emphasis omitted).

C. A Particularized Description of Documents to be Protected, and the Harm that will Result if the Documents are Disclosed

1. The EES Documents

Enron has identified a number of the Andersen Documents that relate to Enron Energy Services (“EES”), which should be maintained as confidential. These documents are listed on the spreadsheet entitled “Confidentiality Log - Arthur Andersen Documents – EES,” (the “EES Log”), which is attached to the Affidavit of Kevin Sweeney, Exhibit B hereto. The documents listed on the EES Log fall into two categories: (1) those containing information relating to claims Enron has against third parties; and (2) those containing personal information of some of Enron’s residential customers. (*See Sweeney Aff.* ¶ 4.)

With respect to the first category, allowing third parties to have access to Enron’s

confidential information relating to claims Enron has against third parties could potentially compromise and diminish the value of those claims. (*See Sweeney Aff.* ¶ 5.) Disclosure of such information, including litigation analysis, could give third parties an unfair advantage and undermine Enron's ability to reach a commercially advantageous resolution of those claims. (*See Sweeney Aff.* ¶ 5.) The value of Enron's bankruptcy estate will be diminished to the extent that the value of Enron's claims against third parties is diminished.

With respect to the second category of information set forth on the EES Log, there can be no dispute that information relating to Enron's commercial customers should be maintained as confidential. Not only could disclosure of this information cause harm to the customers themselves, disclosure of customer information to third parties might open up Enron or others to liability for injuries befalling its customers as a result of the disclosure. (*See Sweeney Aff.* ¶ 6.)

Because all of the documents on the EES Log fall into one of the two categories described above, all of the documents on the EES Log should be maintained as confidential. Enron therefore requests that the Court order that none of the documents listed on the EES Log be disclosed to persons not party to this litigation, and the documents not be used for purposes unrelated to this litigation.

2. The Enron Canada Document

Enron has also identified a document among the Andersen Documents containing confidential information relating to Enron Canada. The document is identified in the affidavit of Craig Hiddleston, attached hereto as Exhibit C, and contains details on how Enron Canada generated and validated its power and gas curves, which show future pricing data relevant to the valuation of unresolved trading contracts. (*See Hiddleston Aff.* ¶ 4.) The document also includes a listing of amounts Enron Canada believed it was owed by contracting parties pursuant to the pricing information contained in the power and gas curves. (*See Hiddleston Aff.* ¶ 4.) Disclosing this document to parties with whom Enron Canada has unresolved trading contracts would compromise Enron Canada's ability to recover reasonable settlements of those outstanding trading contracts. (*See Hiddleston Aff.* ¶ 5.) Preventing Enron Canada from recovering the full value of its outstanding trading contracts could correspondingly diminish the value of Enron's bankruptcy estate. (*See Hiddleston Aff.* ¶ 5.) Enron therefore requests that the document identified in paragraph 3 of the Hiddleston Affidavit be designated as confidential, not be disclosed to persons not party to this litigation, and not be used for purposes unrelated to this litigation.

D. Personnel Information

Pursuant to General Order No. 2002-9, and the Court's March 29, 2003 Order (MDL 1446 Docket Entry No. 83), Enron has identified among the Andersen Documents a number of documents containing personal employee and customer information that should be maintained as confidential. These documents are listed on the spreadsheet entitled "Confidentiality Log – Arthur Andersen Documents – HR, " (The "HR" Log"), which is attached hereto as Exhibit D. The documents listed on the HR log are hereby

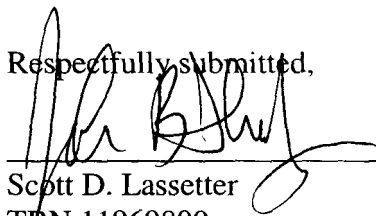
designated by Enron as confidential and should not be disclosed to third parties.

E. Conclusion

For the reasons set forth above, Enron respectfully requests that the Court order the documents listed on the EES Log and the document identified in the Hiddleston Affidavit which Enron has designated as confidential, be withheld from all persons not party to this litigation, and not be used for purposes unrelated to this litigation. Enron also hereby notifies all parties to this litigation that the documents listed on the HR Log are confidential because they contain personnel and employee information.

Dated: February 13, 2004

Respectfully submitted,



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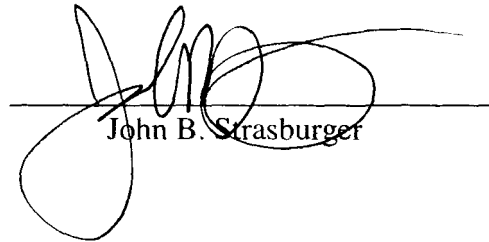
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CERTIFICATE OF SERVICE

I certify that on February 13, 2004, the foregoing was served by e-mail or facsimile on the persons identified in attached service list.

This the 13th day of February, 2004.



John B. Strasburger

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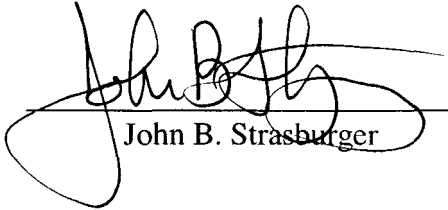
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CERTIFICATE OF CONFERENCE

Pursuant to the Stipulation, Exhibit A, the parties have agreed that the foregoing Motion For Protective Order Regarding Andersen Documents should be filed in the event Enron chose not to waive its confidentiality with respect to the Andersen Documents. The parties have thus conferred prior to the filing of this motion.



John B. Strasburger

The Exhibit(s) May
Be Viewed in the
Office of the Clerk